

How can I get more information?

Contact your local Conservation Commission (through Town or City Hall), the regional office of DEP, or an attorney, consulting engineer or wetlands scientist. If you wish to read the law, the Wetlands Protection Act and the associated Regulations may be found in your town library, on the DEP web site (www.state.ma.us/dep), purchased from the Massachusetts Association of Conservation Commissions (MACC) or the State House Bookstore. MACC also provides extensive explanations in the Environmental Handbook for Massachusetts Conservation Commissioners and other publications.

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The Massachusetts Wetlands Protection Act

How It Protects Our Wetlands, Floodplains and Riverfront Areas



What is the Wetlands Protection Act?

The Massachusetts Wetlands Protection Act (GL Ch. 131 sec. 40; the Act) prohibits any filling, excavation, or other alteration of the land surface, water levels, or vegetation in wetlands, floodplains, riverfront areas or other wetland resource areas, regardless of ownership, without a permit from the local Conservation Commission. This law originated in 1972 when two earlier statutes were combined. Regulations for the Act (310 CMR 10.00; the Regulations) are issued by the Department of Environmental Protection (DEP).

Many cities and towns have adopted zoning or non-zoning ordinances or bylaws which may have additional requirements, and may be handled through the same or a separate permitting process for these activities.

What is a wetland?

Legally the term "wetland" includes not only areas we typically think of as wet lands, such as cattail marshes or red maple swamps, but also intermittent streams, riverfronts, and other areas that may be dry for a significant portion of the year. The Act specifically regulates activities in or near "bordering vegetated wetlands" (BVWs) — wet woods or meadows, marshes, swamps and bogs adjacent to water bodies.

What is a floodplain?

A floodplain is an area that experiences surface flooding following storms, prolonged rainfall or snowmelt. Three types of floodplain areas are protected under the state Act. The more common are coastal areas and those bordering rivers and streams that flood during the statistical or theoretical 100-year flood (that has a 1 percent chance of occurring in any year). The less common areas are isolated depressions that flood at least once a year to an average depth of 6 inches and to a volume of one-quarter acre-foot (10,980 cubic feet).

What other areas are protected?

In addition to BVWs and floodplains, the Act also covers banks, dunes, beaches, vernal pools, land under lakes and ponds, and land under or within 200 feet of rivers and streams which flow year round. Technical definitions are found in the law and its accompanying regulations. Many wetland resource areas are defined by the abundance of wetland plants and by their water regime or hydrology, with the latter sometimes determined by soil type. Riverfront resource areas are in most cases measured from the top of the bank of a river or stream.

Why are wetlands and other water resource areas important?

Over half of this country's original wetland acreage has been lost to agricultural, commercial and residential development. The cost of this loss in degraded water quality, increased storm damage, and depleted fish, wildlife and plant populations has been well documented.

In their natural state, wetlands provide many free services to the community. Low areas serve as floodways to channel storm and other flood waters and act as buffers to prevent damage to nearby roads and buildings. Naturally forested riverfront areas slow flood waters and trap sediment and debris. These functions minimize the need for extensive and expensive engineered flood management systems and seawalls. Wetlands also provide temporary storage of flood waters, allowing floods to recede slowly and, in fresh water wetlands, to recharge groundwater aquifers.

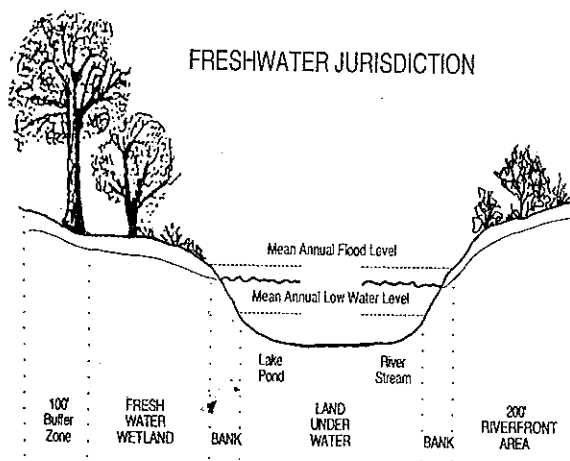
Directly or indirectly, wetlands are often sources of public or private drinking water supply. In addition, wetlands and fully vegetated riverfront lands help to purify the waters they receive from highway or agricultural runoff and other sources. They serve as natural settling areas where soils and vegetation trap sediments which bind and, in some cases, break down pollutants into nontoxic compounds. For example, the sediments under marsh vegetation absorb chlorinated hydrocarbons and heavy metals such as lead, copper and iron. Wetlands and riverfront lands retain nitrogen and phosphorus compounds which otherwise would foster nuisance plant growth and degradation of fresh and coastal waters.

Wetlands are valuable to wildlife — providing food, breeding areas and protective cover. Naturally vegetated riverfront lands also provide essential travel corridors for many species. Shellfish beds and commercial and recreational fisheries are dependent on good water quality and healthy coastal and inland wetlands.

Floodplains are protected because they provide "storage" for flood waters. Any alteration of the land that reduces this storage capacity will displace floodwaters and cause greater flooding elsewhere. Unfortunately there are too many examples of houses flooded and even lives lost through the cumulative effect of many people filling in a floodplain over the years. Floodplains are also valuable to wildlife both for food sources and access to water.

Banks serve as buffers for landowners against storm damage. Vegetated banks bind the soil, preventing erosion caused by wave or surface water flow.

Beaches, dunes, and even river banks are dynamic systems that are continually shifting. In addition to preventing storm damage, coastal banks and dunes can naturally replenish beaches. Left in an undisturbed state, banks and dunes provide the same replenishment as truckloads of sand, but at much less cost. Construction near banks and dunes must be planned carefully in order to allow this shifting to occur.



What activities are prohibited in wetlands, riverfront lands and other resource areas?

Under the Act no one may "remove, fill, dredge, or alter" any wetland, floodplain, bank, land under a water body, land within 100 feet of a wetland, or land within 200 feet of a perennial stream or river, without a permit from the Conservation Commission. The "interests" or values protected under the Act are Flood Control, Prevention of Storm Damage, Prevention of Pollution, Fisheries, Shellfish, Groundwater, Public or Private Water Supply and Wildlife Habitat. The term "alter" is defined to include any destruction of vegetation, or change in drainage characteristics or flow patterns, or any change in the water table or water quality. The Regulations prohibit most destruction of wetlands and naturally vegetated riverfront lands, and require replacement of flood storage lost when floodplains are filled.

Normal maintenance and improvement of land currently in agricultural use is exempt from the provisions of this Act. Preparation of new land for agricultural use is not exempt. Silviculture harvesting is exempt if the landowner has obtained a forest cutting permit from the Department of Environmental Management's regional forester. Certain "limited" projects, such as repairs to some utility facilities and constructing a driveway to uplands where no alternative access is available, may be approved within a resource area with conditions to protect the interests of the Act.

How can I find out if my property lies in or near a resource area?

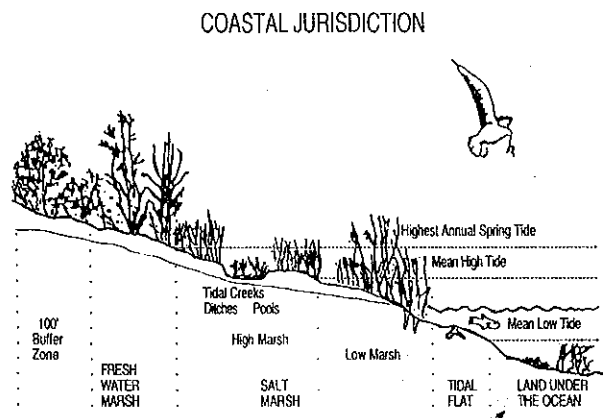
Some areas, such as rivers, streams, ponds, wooded swamps, bogs and cattail marshes, are easily recognizable. Distinguishing other wetland and water resource areas can be more difficult and may require the services of a botanist or wetland scientist. Your Conservation Commission can assist you in identifying wetlands on your property. If you wish to develop your land, the wetlands, floodplains or other regulated areas on or near your property must be mapped, and there are many engineering firms and wetlands consultants that will provide this service.

Floodplain maps issued by the Federal Emergency Management Agency (FEMA) in Boston under the national flood insurance program show the floodplains associated with major streams. Unfortunately, the maps are not complete, and many floodplain areas are not indicated. If your property lies near a stream or in a low-lying area, there is a chance that part of it is sometimes flooded. In most cases this elevation must be calculated by a professional engineer.

To determine if an area is wetland or riverfront area, a landowner or other interested party may submit a form known as a "Request for Determination of Applicability" to the Conservation Commission. The Commission is bound to hold a publicly advertised meeting within 21 days to discuss the matter and issue a decision.

What must I do if I want to conduct a regulated activity in or near any of the resource areas protected by the state Act?

Contact your Conservation Commission for further information on the law and how it applies to the particular project. Regulations issued under the Act should also be consulted because they contain specific standards that your project must meet to be approved. Local wetland bylaws/ordinances should also be reviewed.



For small projects located entirely in the 100-foot wetlands buffer zone (but not within 200 feet of a perennially running stream or river) you may submit a Request for Determination of Applicability with a plan, sketch or other description of the work to be done, showing any measures you plan to take to protect nearby wetlands from alteration. If the project is determined to have no wetlands impact, you will be given permission to proceed as soon as a 10-day appeal period passes. Certain small projects are exempt.

If the project does impact wetlands, banks, dunes, lands within 200 feet of a river or perennial stream or other resource areas, the next step is to submit a formal application known as a "Notice of Intent" to the Conservation Commission. This is a formal presentation carefully prepared, usually with the assistance of an engineer and/or wetlands consultant, according to the standards and criteria defined in the Act and Regulations, and showing in detail all aspects of the proposed project. The Commission will set a time within 21 days for a public hearing on your project and will advertise the hearing in the local paper at your expense. Once the hearing is completed and closed, the Commission must issue its decision, known as an "Order of Conditions," within 21 days.

You may also submit an "Abbreviated Notice of Resource Area Delineation" if you are just seeking clarification of boundaries.

You may appeal the Order of Conditions within 10 days. Abutters, 10 residents of the community or DEP can also appeal within the 10-day period. Under the state Act, appeal is first to the regional office of DEP which will issue what is known as a "Superseding Order." Further appeal of this Order is to the Boston office of DEP, and then to Superior Court. The process of appeal of a decision under a local bylaw or ordinance is different and should be checked with the local Commission.

What are the penalties for violating the law?

Violations are punishable by a maximum fine of \$25,000 and/or not more than two years of imprisonment. In addition, a landowner is usually required to restore illegally altered land to its original condition.